

PUBLIC DEFENDER

Budget Summary							
Fund	2014-15 Base Year Doubled	2015-17 Governor	2015-17 Jt. Finance	2015-17 Legislature	2015-17 Act 55	Act 55 Change Over Base Year Doubled	
						Amount	Percent
GPR	\$165,788,600	\$170,245,600	\$170,196,900	\$170,196,900	\$170,196,900	\$4,408,300	2.7%
PR	<u>2,612,400</u>	<u>2,696,100</u>	<u>2,696,100</u>	<u>2,696,100</u>	<u>2,696,100</u>	<u>83,700</u>	3.2
TOTAL	\$168,401,000	\$172,941,700	\$172,893,000	\$172,893,000	\$172,893,000	\$4,492,000	2.7%

FTE Position Summary						
Fund	2014-15 Base	2016-17 Governor	2016-17 Jt. Finance	2016-17 Legislature	2016-17 Act 55	Act 55 Change Over 2014-15 Base
GPR	574.85	620.60	609.85	609.85	609.85	35.00
PR	<u>5.00</u>	<u>5.00</u>	<u>5.00</u>	<u>5.00</u>	<u>5.00</u>	<u>0.00</u>
TOTAL	579.85	625.60	614.85	614.85	614.85	35.00

Budget Change Items

1. STANDARD BUDGET ADJUSTMENTS

GPR	\$3,685,400
PR	<u>83,700</u>
Total	\$3,769,100

Governor/Legislature: Provide adjustments to the base totaling \$1,816,900 GPR and \$41,700 PR in 2015-16, and \$1,868,500 GPR and \$42,000 PR in 2016-17. Adjustments are for: (a) full funding of continuing position salaries and fringe benefits (\$1,181,200 GPR and \$27,000 PR annually); (b) overtime (\$211,400 GPR and \$2,800 PR annually); and (c) full funding of lease and directed moves costs (\$424,300 GPR and \$11,900 PR in 2015-16, and \$475,900 GPR and \$12,200 PR in 2016-17).

2. ELIMINATE BASE FUNDING FOR PAY PROGRESSION [LFB Paper 261]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	- \$4,036,800	\$481,300	- \$3,555,500

Governor: Eliminate base funding for pay progression for assistant state public defenders (ASPD). Under 2013 Act 20, an annual GPR appropriation was created to supplement the Office of the State Public Defender's salary and fringe benefit funding in order to support annual salary adjustments for ASPDs under the pay progression plan. Base funding for the salary adjustments appropriation is \$2,018,400. While the bill would eliminate base funding for pay progression for ASPDs, the bill would not eliminate the pay progression appropriation and statutory structure. However, any funding for pay progression salary adjustments in the 2015-17 biennium would need to be supported from within the agency's budget or from compensation reserves, or both.

Under 2013 Act 20, ASPDs are compensated pursuant to a merit-based pay progression plan that consists of 17 hourly salary steps, with each step equal to one seventeenth of the difference between the prosecutor's lowest possible annual salary (\$49,430) and the highest possible annual salary (\$119,472). Notwithstanding the creation of a 17 hourly salary step pay progression plan, the State Public Defender is authorized to: (a) deny annual salary increases to individual ASPDs; and (b) increase the salary of an individual ASPD by up to 10% a year.

Joint Finance/Legislature: Provide the Office of the State Public Defender \$481,300 in 2016-17 in order to support salary adjustments for eligible assistant state public defenders under the pay progression plan. The funding is intended to support a 2% average salary adjustment for eligible assistant state public defenders under the pay progression plan in 2016-17.

3. PRIVATE BAR COSTS

GPR	\$2,818,000
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Governor/Legislature: Provide \$1,409,000 annually as a reestimate of funding necessary to pay private bar attorney costs. The State Public Defender employs trial and appellate attorneys who represent clients who qualify for SPD representation. Staff attorneys, however, do not represent all clients who qualify for SPD representation. Indigent legal defense cases are assigned by the SPD to private bar attorneys due to either an overflow cases in excess of what can be assigned to available SPD staff attorneys, or for cases in which staff attorneys may have a conflict of interest. Private bar attorneys assigned to SPD cases may be paid in one of the following ways: (a) at a rate of \$40 per hour for time spent in and out of court related to a case, and \$25 per hour for travel related to a case if any portion of the trip is outside the county in which the attorney's principal office is located or if the trip requires traveling a distance of more than 30 miles, one way, from the attorney's principal location; or (b) a flat, per case contracted fee that may not result in the private attorney receiving more than the attorney would have if the attorney was reimbursed under the method described under (a). Private bar reimbursements are supported by a biennial, GPR appropriation. Base funding for the appropriation is \$23,155,400.

4. INCREASED STAFFING FOR THE PUBLIC DEFENDER [LFB Paper 500]

	Funding	Positions
GPR	- \$40,800	35.00

Governor/Legislature: Provide \$2,304,200 in 2015-16 and \$2,686,000 in 2016-17, and 35.0 positions, in order for SPD staff to increase its workload capacity. Funding is comprised of the following: (a) \$1,196,200 in 2015-16 and \$1,594,900 in 2016-17 for permanent position salaries; (b) \$507,900 in 2015-16 and \$677,200 in 2016-17 for fringe benefits; (c) \$413,900 annually for supplies and services; and (d) \$186,200 in 2015-16 for one-time financing. The 35.0 positions are comprised of: (a) 26.0 assistant state public defenders; (b) 5.2 legal secretaries; (c) 2.5 investigators; and (d) 1.3 client service specialists. Base funding for SPD trial and appellate representation is: (a) \$48,534,900 GPR and 507.85 positions for trial representation; and (b) \$4,498,600 GPR and 43.35 positions for appellate representation. All funding and position authority authorized under this provision is allocated towards trial representation.

Reduce funding for private bar and investigator reimbursements by \$1,677,000 in 2015-16 and \$3,354,000 in 2016-17. The reduction in funding is associated with estimated savings from having a greater number of SPD cases litigated by SPD staff, rather than private bar attorneys.

The State Public Defender employs trial and appellate attorneys who represent clients who qualify for SPD representation. Generally, the State Public Defender provides legal representation for indigent persons: (a) facing a possible sentence that includes incarceration; (b) involved in certain proceedings under the Children's and Juvenile Justice Codes (Chapters 48 and 938 of the Wisconsin statutes); (c) subject to petitions for protective placement (Chapter 55 of the Wisconsin statutes); (d) facing involuntary commitment; (e) involved in certain post-conviction or post-judgment appeals; and (f) undergoing proceedings for modification of a bifurcated sentence, if representation has been requested by the indigent person or the case has been referred by a court, and the Public Defender determines that the case should be pursued. In instances where SPD staff attorneys cannot be assigned an indigent legal defense case due to an overflow of cases in excess of what can be assigned to SPD staff, the SPD assigns the case to a private bar attorney.

5. CONFLICTS OFFICE CREATION [LFB Paper 501]

	Governor (Chg. to Base)		Jt. Finance/Leg. (Chg. to Gov)		Net Change	
	Funding	Positions	Funding	Positions	Funding	Positions
GPR	-\$142,000	10.75	\$142,000	- 10.75	\$0	0.00

Governor: Provide \$709,600 in 2015-16 and \$830,900 in 2016-17, and 10.75 positions, and direct the SPD to establish and administer a conflicts office in Milwaukee County as part of a two-year pilot program, beginning on the effective date of the budget bill. Under the bill, the conflicts office would represent clients in conflict of interest cases in Milwaukee County, Waukesha County, and Racine County. Funding would be comprised of the following: (a) \$373,900 in 2015-16 and \$498,500 in 2016-17 for permanent position salaries; (b) \$158,800 in

2015-16 and \$211,700 in 2016-17 for fringe benefits; (c) \$120,700 annually for supplies and services; and (d) \$56,200 in 2015-16 for one-time financing. The 10.75 positions would be comprised of: (a) 6.0 assistant state public defenders; (b) 1.0 assistant state public defender supervisor; (c) 2.0 legal secretaries; (d) 1.0 investigator; and (e) 0.75 client service specialist.

Reduce funding for private bar and investigator reimbursements by \$560,800 in 2015-16 and \$1,121,700 in 2016-17. The reduction in funding is associated with estimated savings from having the conflicts office litigate cases that would normally be litigated by private bar attorneys.

While the State Public Defender employs trial and appellate attorneys who represent clients who qualify for SPD representation, staff attorneys do not represent all clients who qualify for SPD representation. If two potential SPD clients have conflicting or potentially conflicting interests, the SPD cannot represent both clients. Instead, the SPD must contract with private attorneys to represent at least one of the potential clients.

Joint Finance/Legislature: Delete provision.

6. INTEREST RATES ON FIXED FEE CONTRACTS

Governor/Legislature: Exempt the State Public Defender from paying interest rates on payments toward fixed fee contracts with private attorneys who are assigned SPD cases. This provision would first apply to contracts entered into, modified, renewed, or extended, on the effective date of the budget bill. The exemption on interest payments would not apply to payments made to other private attorneys who are compensated based on the statutorily defined rate of: (a) \$40 per hour for time spent related to a case; and (b) \$25 per hour for travel.

Under current law, indigent legal defense cases are assigned by the SPD to private bar attorneys due to either an overflow of cases in excess of what can be assigned to available SPD staff attorneys, or cases in which staff attorneys may have a conflict of interest. Private bar attorneys assigned to SPD cases may be paid in one of the two following ways: (a) pursuant to the statutorily defined rate; or (b) a flat, per case contracted fee that may not result in the private attorney receiving more than the attorney would have if the attorney was reimbursed under the method described under (a). Payments that are made to private attorneys more than 120 days after the receipt of a properly completed invoice or the completion of the attorney's services, whichever is later, are subject to a 12% interest rate compounded monthly. [Under the state accounting manual, the SPD may make payments to private bar attorneys within 120 days of receipt without incurring interest fees, rather than within the 30 day limit that is established under statute.] In 2013-14, the SPD paid \$400 in interest fees on fixed fee contracts.

[Act 55 Sections: 292 and 9333(1)]

7. CYBERSECURITY [LFB Paper 502]

	Governor (Chg. to Base)	Jt. Finance/Leg. (Chg. to Gov)	Net Change
GPR	\$1,979,200	- \$672,000	\$1,307,200

Governor: Provide \$1,325,600 in 2015-16 and \$653,600 in 2016-17 for network server upgrades, broadband security, workstation security, and information technology infrastructure management related to cybersecurity improvements. According to the State Budget Office, funding will be utilized as follows: (a) \$548,000 annually for network management and servers; (b) \$105,600 annually for broadband network costs; (c) \$326,000 in 2015-16 for infrastructure management; and (d) \$346,000 in 2015-16 for security remediation. The cybersecurity improvements would be managed by the Department of Administration's Division of Enterprise Technology.

Joint Finance/Legislature: Delete one-time funding totaling \$672,000 in 2015-16. The reduction of \$672,000 in 2015-16 would account for the following services that the Department of Administration's Division of Enterprise Technology provided the SPD in 2014-15: (a) \$326,000 for network and server management; and (b) \$346,000 for an upgrade of SPD's operating system.

8. MADISON OFFICE CONSOLIDATION

GPR	\$194,000
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Governor/Legislature: Provide \$194,000 of supplies and services funding in 2015-16 to support the consolidation of the Madison-based Public Defender offices. Currently, the Public Defender operates two offices in Madison. One office houses personnel performing duties related to providing trial and appellate representation to indigent clients. The other office houses personnel performing duties related to agency-wide administration. The funding would support the costs of relocating the administration staff to the trial and appellate representation office. On-going rent costs associated with the consolidation are addressed in the agency's standard budget adjustments.

9. LAPSE REQUIREMENT

Governor/Legislature: Specify that the 2013 Act 145 requirement that the Office lapse \$118,700 to the general fund from the unencumbered balances of GPR and PR appropriations in 2015-16 would also apply to 2016-17. [See "Budget Management and Compensation Reserves."]

[Act 55 Section: 4749]